

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Crim. No. 23-346 (JRT/DTS)

Plaintiff,

v.

DONTAINEUN JAVON CAIN,

**MEMORANDUM OPINION AND ORDER
ADOPTING REPORT AND
RECOMMENDATION**

Defendant.

Michael Patrick McBride, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for Plaintiff.

Deborah K. Ellis, **ELLIS LAW OFFICE**, 101 East Fifth Street, Suite 1500, Saint Paul, MN 55101, and Marie Celine Pacyga, **RYAN PACYGA CRIMINAL DEFENSE**, 860 Blue Gentian Road, Suite 175, Eagan, MN 55121, for Defendant.

Defendant Dontaineun Javon Cain is charged with being an armed career criminal in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). (Indictment at 1–2, Nov. 16, 2023, Docket No. 1.) Cain moved to dismiss the indictment, arguing that sections 922(g)(1) and 924(e) are facially unconstitutional under the Second Amendment as construed by *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). (Mot. Dismiss Indictment at 1, Jan. 29, 2024, Docket No. 48.) Magistrate Judge David Schultz issued a Report and Recommendation (“R&R”) recommending that the motion be denied because Cain’s argument is foreclosed by *United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023). (R. & R. at 1–2, Mar. 26, 2024, Docket No. 52.) Cain agrees with the Magistrate

Judge's reading of Eighth Circuit precedent but objects to preserve the issue for appeal. (Def.'s Obj. R. & R. at 2, Apr. 8, 2024, Docket No. 54.)

Within 14 days after a magistrate judge files an R&R, a party may file "specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); *accord* D. Minn. LR 72.2(b)(1). "The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). "The objections should specify the portions of the magistrate judge's report and recommendation to which objections are made and provide a basis for those objections." *Mayer v. Walvatne*, No. 07-1958, 2008 WL 4527774, at *2 (D. Minn. Sept. 28, 2008). "Objections which are not specific but merely repeat arguments presented to and considered by a magistrate judge are not entitled to *de novo* review, but rather are reviewed for clear error." *Montgomery v. Compass Airlines, LLC*, 98 F. Supp. 3d 1012, 1017 (D. Minn. 2015). Because Cain simply repeats his prior arguments, the Court will review the Magistrate Judge's recommendation for clear error.

The Eighth Circuit's decision in *Jackson* forecloses Cain's constitutional challenge. 69 F.4th at 505–06; *see also United States v. Dunn*, 76 F.4th 1062, 1068 (8th Cir. 2023). As Cain concedes, the Magistrate Judge did not clearly err by applying established Eighth Circuit precedent. Accordingly, the Court will overrule Cain's objection, adopt the Magistrate Judge's R&R, and deny Cain's motion to dismiss.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Objection to the Report and Recommendation [Docket No. 54] is **OVERRULED**;
2. The Magistrate Judge's Report and Recommendation [Docket No. 52] is **ADOPTED**; and
3. Defendant's Motion to Dismiss the Indictment [Docket No. 48] is **DENIED**.

DATED: May 9, 2024
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge